

**CONTRACT FOR
PROFESSIONAL DESIGN SERVICES**
Contract No. 2016-14

This Contract is entered into this ____ day of _____, 20__ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Plateau Engineering, Inc., an Arizona company ("Contractor").

WHEREAS, the City of Flagstaff desires to receive and Contractor is able to provide professional services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the City and Contractor (the "parties") agree as follows:

SERVICES

1. **Scope of Work:** Contractor shall provide the professional services generally described as follows:

STREET MAINTENANCE PROGRAM 2016, 2017 AND 2018 PROFESSIONAL DESIGN SERVICES

and as more specifically described in the scope of work attached hereto as Exhibit A.

2. **Schedule of Services:** Contractor shall perform all work per the schedule set forth in Exhibit A.
3. **Standard Terms and Conditions:** The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. **Key Personnel/Subcontractors:** Contractor's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

5. **City Representative:** The City Representative is Patrick Brown, C.P.M., Senior Procurement Specialist or his/her designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.
6. **City Cooperation:** City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Contractor's performance of this Contract.

CONTRACT TERM

7. **Contract Term:** The Contract shall be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed, and shall be in force for an initial term of three (3) consecutive years.

8. Renewal: This Contract may be renewed for up to two (2) additional one (1) year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
9. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.

PAYMENT

10. Compensation: Contractor shall be paid for satisfactory performance of the work, in accordance with the Compensation Schedule attached hereto as part of Exhibit A.
11. Price Adjustment: If price adjustments are permitted (see Exhibit A), any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

DATA AND RECORDS

12. City Ownership of Document and Data: Any original documents prepared or collected by Contractor in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of City ("City's work product"), unless otherwise agreed by the parties in writing. Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the City all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.
13. Re-Use: City may use City's work product without further compensation to Contractor; provided, however, City's reuse without written verification or adaption by Contractor for purposes other than contemplated herein is at City's sole risk and without liability to Contractor. Contractor shall not engage in any conflict of interest nor appropriate any portion of City's work product for the benefit of Contractor or any third parties without City's prior written consent.
14. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to City copies all of City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

INSURANCE

15. Insurance: Contractor shall meet insurance requirements of the City, set forth in Exhibit C.

MISCELLANEOUS

16. Notice: Any notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Patrick Brown, C.P.M.
Senior Procurement Specialist
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001
pbrown@flagstaffaz.gov

To Contractor:

Jim Hall, P.E., R.L.S.
President
323 N. San Francisco Street, Suite 201
Flagstaff, Arizona 86001
jdhall@plateng.com

17. Authority. Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

(Please sign in blue ink. Submit original signatures – photocopies not accepted)

CONTRACTOR

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Notice to Proceed issued: _____, 20____

EXHIBIT A SCOPE OF WORK

1.0 GENERAL

1.1 DESCRIPTION

Every year, the City of Flagstaff implements a comprehensive annual street maintenance program. The program consists of asphalt pavement overlay, application of chip seal and micro seal surface treatments, concrete work for ADA compliance, utility adjustments and upgrades, pavement marking and related miscellaneous work. Funding for the overlay portion of the Street Maintenance Program is to be provided by the 2014 voter approved sales tax increase. Funding for the chip seal portion of the Street Maintenance Program is to be provided by the budgeted fiscal year general funds as well as other accounts (i.e. Airport).

Areas selected for improvement rotate on an annual basis. Overlay work ~~is~~ has historically been programmed for either the west half or east half of the City streets while surface treatments are selected within a specific quadrant of the City. Switzer Mesa and Route 66 define the boundaries for definition of the annual scope of work. The City of Flagstaff may explore programming future projects differently.

The scope of services will consist of the design and preparation of a complete set of construction plans, contract documents, construction specifications, special provisions, cost estimates, bid schedule, video logs of all streets to receive treatment, and engineering data for construction of the proposed improvements. In order to avoid conflicts with other current or planned projects, it is expected that preparation of this information will require considerable coordination with City divisions including streets, traffic, survey, utilities and private development as well as the franchise utilities.

Street condition ratings, as determined utilizing Cartegraph Pavement View Plus software will form the basis for determination of street improvement selections. These ratings will be conducted by City staff and provided to the consultant. Final definition of the annual program will be determined by the consultant based upon budgetary considerations, cost estimates prepared for treatment of selected streets and definition of conflicts with other projects. It is expected than no less than three scope/cost iterations will be required in order to fully define the contracted improvement program.

1.2 DEFINITIONS

ADOT	Arizona Department of Transportation
COF	City of Flagstaff
PM	Project Manager – The individual, assigned to the project by the COF, who is responsible for the overall coordination with the COF and the consultant. All matters concerning the project, including submittals, telephone conversations, meetings and written correspondence shall be directed to this person.
CA	Contract Administrator
MAG	Maricopa Association of Governments

1.3 CONSTRUCTION COST

The annual construction budget for the calendar years under the terms of this agreement is anticipated to range from approximately \$4,000,000 to \$10,000,000. These budgeted amounts include professional services, internal staff costs and other internal costs. The project manager will provide to the consultant, on an annual basis, the total amount available for construction work for use in preparation of the contract documents.

1.4 LENGTH OF SERVICES

The length of services shall be determined by the number of calendar days from issuance of a formal Notice to Proceed through July 30, 2018. Although the term of the contract is for three calendar year programs, individual milestones will be established on an annual basis for each individual program.

1.5 PROJECT SCHEDULE

The consultant shall provide a preliminary project schedule within ten calendar days of Notice to Proceed for review by the City. For each program year, the schedule shall show significant milestone dates and include time for City and other agency reviews. The schedule shall show pre-final plans, specifications and pricing documents for the City's CMAR contractor no later than February 28 of each calendar year the contract remains in effect. The schedule shall be updated as necessary if events occur which significantly delay or alter progress of the work.

2.0 APPLICABLE STANDARDS

The following standards shall be followed through the design and construction of the improvements, as applicable.

- 2.1 City of Flagstaff Engineering Design and Construction Standards & Specifications, most recent edition.
- 2.2 Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction, most recent edition.
- 2.3 Arizona Department of Transportation (ADOT) Standard Specifications for Road and Bridge Construction, most recent edition.
- 2.4 The Americans with Disabilities Act (ADA).

3.0 WORK PERFORMED BY CONSULTANT

The consultant shall be responsible for the work outlined in this section. The work shall conform to the standards, criteria and requirements of this Scope of Services.

3.1 PROJECT DEVELOPMENT

The work consists of the development of a complete, set of construction plans, construction specifications, contract documents, special provisions, cost estimates, bid schedule, video logs of all streets to receive treatment, and engineering data for the proposed work. The consultant shall review and verify all preliminary data supplied by the COF and supplement the data as necessary to complete the work. Preliminary plans and contract documents shall be submitted to the City at the 30%, 60%, pre-final and final stages of project development for review by the City and other agencies. Review comments and contract document modifications received by the consultant at each submittal stage shall be incorporated into the subsequent stage of project development. Minimum requirements for each submittal are outlined below.

3.1.1 30% SUBMITTAL

Plan submittal shall include draft cover sheet, key maps with proposed improvements, preliminary improvement schedule and a preliminary cost estimate. All quantities used to develop a preliminary cost estimate shall be field verified. Proposed surface treatments for individual street segments will be provided to the consultant based upon street ratings conducted by the City.

Preliminary plans shall be submitted by the consultant to all franchise utilities and City divisions for review. Review at this stage of project development shall consist primarily of identification of conflicts with other planned or current construction work anticipated within the project area. Upon identification of any anticipated conflicts, street treatments shall be revised, deleted or relocated to resolve the conflicts. These modifications shall be incorporated into subsequent plan submittals.

3.1.2 60% SUBMITTAL

Plan submittal shall include draft cover sheet, key maps with revised improvement identifications, revised improvement schedule, general notes and details, cost estimate and draft specifications.

60% plans shall be submitted to the franchise utilities and City divisions for review. At this stage of project development, identification of utility adjustments required, survey monuments to be re-set, pavement marking revisions required, and traffic signal loop detectors required shall be determined for incorporation into the 90% submittal. The City's project manager shall distribute copies of the plans to the relevant City personnel for collection of this data and provide results to the consultant. The consultant shall determine the required ADA compliance quantities for overlay streets and incorporate this information in the 60% submittal. All quantities used to develop a preliminary cost estimate shall be field verified.. Cost estimates shall be reviewed at this stage and any changes to the scope of work required by budgetary constraints shall be made and incorporated into the subsequent submittal.

3.1.3 Pre-final SUBMITTAL

At this stage of project development, it is anticipated that the contract documents will be essentially complete. Submittal shall include finished cover sheet, completed key maps with treatment identifications, improvement schedules and quantities, general notes and details, cost estimate, contract documents and construction specifications.

Pre-final plans shall be submitted to the franchise utilities and City divisions for review. Review comments from City staff shall be solicited and compiled by the City's project manager and provided to the consultant. Based upon this review, contract documents and cost estimates shall be revised for final submittal.

Copies shall also be submitted to ADOT together with a right-of-way permit application if necessary for work in or adjacent to ADOT roads. Permit shall be secured by consultant for inclusion in the final submittal.

3.1.4 FINAL SUBMITTAL

The consultant shall provide to the City a complete reproducible bid ready package of plans (mylar), contract documents and construction specifications, and cost estimate sealed by a Registered Professional Engineer. The final submittal shall incorporate all revisions identified in the **Pre-final** review. The consultant shall provide two cover sheets for City signatures. Plan cover sheet shall have signature acknowledgements of franchise utility personnel and include an ADOT permit number if required.

4.0 MATERIALS FURNISHED BY THE CITY OF FLAGSTAFF

The following materials will be furnished to the consultant by the City for his use in preparation of the contract documents.

Street condition ratings including Overall Condition Index (OCI)

Initial improvement schedule for selected street segments

Digital file of City street map

Digital files of previous two years street maintenance program plans and specifications

Valve and manhole adjustment data

Survey monument adjustment data

Pavement marking revisions

Historical cost estimating data

Budget criteria

Assistance with ADA determinations

Striping revision(s) when applicable

5.0 ADMINISTRATION

5.1 CITY OF FLAGSTAFF

The City of Flagstaff will administer the Consultant Services Agreement. All contractual payments and changes will be reviewed by the City's Project Manager. Contract award, change orders, and final payments are subject to City Council approval.

5.2 PROJECT MANAGEMENT

The project manager (PM) will:

1. Conduct ongoing reviews of the Consultant's progress in performing the work and will furnish technical comments in a timely manner.
2. Review the Consultant's billings.
3. Review and evaluate the Consultant's requests for extension of time and change orders and recommend appropriate action.
4. Coordinate the distribution of public information.
5. Review the data (including documentation of prior rights, cost estimates and plans) necessary for COF to prepare and execute all utility or railroad agreements.
6. Review and evaluate any Consultant requests for changes in project personnel from those specified in the Consultant's Technical Proposal.
7. Review the Consultant's Quality Control Program and the Consultant's conformance to their QC/QA Program when submittal of a QC/QA plan is required.
8. Submit the information necessary for acquisition of rights-of-way and easements by the City of Flagstaff.
9. Prepare the necessary data for project clearance letters.
10. Provide the point of contact for all questions, requests, and submittals.

5.3 CONSULTANT

The consultant shall:

1. Establish, furnish and maintain suitable office facilities to serve as the Project Office for the duration of the project in the location specified in the Consultant's technical proposal.
2. Maintain an adequate staff of qualified support personnel to perform the work necessary to complete the project.

3. Establish internal accounting methods and procedures for documenting and monitoring project costs.
4. Establish and maintain contract administration procedures, which will include Change Orders, Time Extensions and Subcontracts.

5.4 CONSULTANTS RESPONSIBILITY

1. The Consultant has total responsibility for the accuracy and completeness of the contract documents and related design prepared under this project and shall check all such material accordingly. The plans will be reviewed for conformity with City of Flagstaff standards, procedures, and the terms of the contract, as well as coordination with adjacent construction. Review by COF does not necessarily include detailed review or checking of design of major components and related details or the accuracy with which such designs are depicted on the plans. The responsibility for accuracy, completeness, construct-ability and economy of such items remains solely that of the Consultant.
2. The Consultant may be required to meet with COF staff and provide written progress reports that describe the work performed on each task. The dates and times of these meetings will be established by COF.
3. Within ten (10) calendar days after receipt of the Notice to Proceed, the Consultant shall provide a schedule of calendar deadlines.
4. Due to the nature and scope of the required services, it may be desirable for the Consultant to subcontract portions of the work; however, the subcontracting firms must be approved in writing prior to initiation of any work. The volume of work performed by the subcontractors shall not exceed thirty percent (30%) of the total contract value.
5. The Consultant shall furnish copies of all written correspondence between the Consultant and any party pertaining specifically to this project to COF for their records within one (1) week of the receipt or mailing of said correspondence. The Consultant is responsible for recording and distributing the minutes of all meetings pertaining to this project.
6. The Consultant has total responsibility for the accuracy and completeness of the plans and related designs prepared accordingly. The Consultant shall have a QC/QA Plan in effect during the entire time work is being performed under this contract. The Plan shall establish a process whereby calculations are independently checked, plans checked, corrected and back-checked. All plans, calculations and documents submitted for review shall be clearly marked as being fully checked by a qualified individual other than the originator, and having the originator and checker identified. The criteria for acceptance shall be a product of neat appearance, well-organized, accurate and complete, technically and grammatically correct and checked in accordance with the approved QC/QA plan.

When required, the Consultant's QC/QA Plan shall be submitted to COF within fifteen (15) working days of receipt of written Notice to Proceed.

7. The Consultant's work shall be performed and/or directed by the key personnel identified in the technical/fee proposal presentations by the Consultants. Any changes in the indicate key personnel or the Consultant's officer-in-charge of the work, as identified in the Consultant's proposal, shall be subject to review and written approval by COF.

8. The plans, designs, calculations, reports and other documents furnished under this Scope of Work shall conform to the "standards of the industry" quality as acceptable to COF. The criteria for acceptance shall be a product of neat appearance, well-organized, accurate and complete, technically and grammatically correct, checked in accordance with the approved QC/QA Program, and having the maker and checker identified.

FEE SCHEDULE



December 15, 2015

Mr. Erik Solberg
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

RE: STREET MAINTENANCE PROGRAM 2016, 2017, 2018
FEE PROPOSAL

Dear Mr. Solberg:

Plateau Engineering is pleased to be working with you on the Street Maintenance Program 2016, 2017, 2018. We have reviewed the draft Agreement for Consulting Services and Scope of Services included with the City of Flagstaff RSOQ for this project. We do not have any comments or concerns with the Agreement. Our Project Approach and Scope are outlined in the October 28, 2015 Plateau response to the RSOQ.

We have developed a fee proposal for this multi-year program based on projected construction amounts given to us by the City of Flagstaff and historical information on design fees over the past 12 years. Our proposed fee is:

Year	Proposed Fee	Construction Budget
Year 2016:	\$101,557.45	\$5.41 million
Year 2017:	\$89,173.31	\$4.70 million
Year 2018:	<u>\$93,731.97</u>	\$ 4.75 million
TOTAL:	\$284,462.74	

We will complete the work on a Time and Materials Not to Exceed basis of \$284,462.74. A spreadsheet is attached to this fee proposal that indicates how we arrived at this fee.

We look forward to getting started on the 2016 program. If you have any questions, or if I can provide any further information, please don't hesitate to contact me.

Sincerely,

James D. Hall
President

323 N. San Francisco Street, Suite 201 • Flagstaff, Arizona 86001 • (928) 556-0311 • Fax (928) 213-9614

EXHIBIT B
CITY OF FLAGSTAFF STANDARD TERMS AND CONDITIONS

IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
7. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials, and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to City upon City's acceptance of the materials.
10. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

11. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
12. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.
14. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
15. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
16. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

17. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
18. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
19. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as

part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
21. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.
22. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.
23. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.
24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

SERVICES

25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
26. **CONTROL:** Contractor shall be responsible for the control of the work.
27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
31. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit

Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

- 32. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.
- 33. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
- 34. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.
- 35. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION, INSURANCE

- 36. **GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City's Specific Terms and Conditions.
- 37. **INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker's compensation.
- 38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 39. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 40. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
- 41. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
- 42. **SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
- 43. **NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 44. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.
- 45. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 46. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
- 47. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.
- 48. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City

contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.

- 49. IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter “Contractor Immigration Warranty”). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor’s Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

- 50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.
- 51. CITY REMEDIES:** In the event of Contractor’s default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
- 52. CONTRACTOR REMEDIES:** In the event of City’s default, Contractor may pursue all remedies available at law, except as provided for herein.
- 53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.

- 55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
- 56. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
- 57. PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
- 58. CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
- 59. CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

- 60. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
- 61. NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.
- 62. THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
- 63. GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
- 64. FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.

65. ATTORNEYS FEES: If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys fees, costs, professional fees and expenses.

EXHIBIT C

INSURANCE

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –

Any Automobile or Owned, Hired
and Non-owned Vehicles

Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

[OPTION: e. Professional Liability \$2,000,000]

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely

responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.

5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
 - b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
 - c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
 - d. Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
 - f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.
6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: Patrick Brown, C.P.M.
Contract No. 2016-14
Purchasing Section
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001.
7. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.
9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.